

¶ 74. Under any interpretation of the Act, including the interpretation recently provided by the Eighth Circuit, this statement standing alone does not satisfy BellSouth's checklist obligations. BellSouth must provide CLECs with access to the hardware and software that they need to combine elements efficiently. The SGAT gives no indication that BellSouth will do so. The SGAT says only that "BellSouth will physically deliver unbundled network elements where reasonably possible," and gives no explanation of what standards BellSouth might use to determine what is reasonable or any intervals for that determination or for delivery of elements. See SGAT § II.F.1. In particular, BellSouth makes no statements at all as to when, in its view, it is not "reasonably possible" to physically deliver the network elements. In this regard, the SGAT offers only the mysterious suggestion that any additional assistance from BellSouth will be available only on a negotiated basis. Id. As a practical matter, this is wholly inadequate. BellSouth may well claim that it is not "reasonably possible" to physically deliver most elements. Will BellSouth combine some elements at a CLEC's request? Will it do so free of charge, or at a cost-based rate? Or will it simply refuse to provide such elements in combination? As to all of this, the SGAT is silent. The SGAT cannot support the conclusion that BellSouth will allow CLECs to provide service through combinations of network elements as required by the competitive checklist, and it gives no indication of how it will provide these elements.

32. Finally, BellSouth gives no assurance that it will not stop providing network elements that it currently offers on the grounds that those elements are actually combinations of network elements. For example, BellSouth does not commit to providing unbundled loops as unbundled loops, without breaking them apart into loop feeder, loop concentration, loop distribution, and the NID. The SGAT's failure to address this issue in a

specific and enforceable way amounts to a failure to demonstrate full compliance with the requirements of the Act. I have great difficulty with the Eighth Circuit's understanding of the Act's combination requirement. But under that understanding, or this Commission's understanding, or any other understanding, BellSouth's SGAT cannot possibly be sufficient to prove that it makes available network elements to be combined.

B. Subloop elements

33. The subparts of the local loop -- loop feeder and loop distribution -- are network elements that must be unbundled at any technically feasible point at the request of a CLEC. There is no question that it is technically feasible for BellSouth to provide unbundled access to subloop elements at the feeder/distribution interface. BellSouth has not attempted to present any evidence demonstrating otherwise. However, BellSouth offers loop distribution only via the BFR process. See Varner Aff. ¶¶ 86, 88. This will create unreasonably delay in CLECs' access to a critical unbundled element.

34. Access to unbundled loop distribution is vitally important to CLECs that are building their networks into new areas. With such access, CLECs can connect their own feeder to the unbundled loop distribution, reducing their reliance on BellSouth-owned facilities and increasing facilities-based competition. For example, if a CLEC has a SONET ring running down a road past many customer premises, it is still extremely difficult, time-consuming, and expensive for the CLEC to negotiate entrance rights-of-way with property owners and to construct entrance facilities. The CLEC must negotiate with real estate companies, obtain rights-of-way and approvals to use risers and conduits, and obtain construction approval where construction is required, such as the many instances where risers -- the facilities that

accommodate lines running to individual offices or apartments -- are already full. Even when the CLEC eventually gains access to a building, it does not know whether it will regain its substantial investment in the local loop. However, if the CLEC can interconnect with BellSouth at the feeder/distribution interface and utilize BellSouth's loop distribution, it can maximize the use of its network and be in a position to compete fully. This is consistent with a central goal of the unbundling requirements -- affording new competitors the option of relying on their own facilities to the extent practicable and avoiding unnecessary dependence on ILEC facilities. BellSouth's offer of loop distribution only via the BFR process restricts the ability of CLECs to achieve this.

C. Dark fiber

35. Although BellSouth does offer dark fiber in its SGAT, see SGAT § II.B.7., it does not do so on standardized terms that are reasonable and nondiscriminatory. Instead, instead of providing firm intervals, the SGAT merely promises that "BellSouth shall use its best efforts" to provide a requesting CLEC with information about the location, availability, and performance of dark fiber within ten days if the information is available from records, and twenty days if the information must be obtained in the field. See SGAT, Attach. C, § 13.2.2. Then, "BellSouth shall use its best efforts" to make the requested dark fiber available to the CLEC within an additional thirty days from the CLEC's written confirmation that it wants to use the dark fiber. See SGAT, Attach. C, § 13.2.3. To truly offer dark fiber as required by the Act, the SGAT must do more than promise BellSouth's "best efforts." The SGAT must make real commitments on which CLECs can depend. As it stands, the SGAT allows BellSouth to take much longer than the forty-day minimum set forth there, and gives the CLEC no contractual remedy whatsoever. And, although BellSouth states in the Milner affidavit that it has

“successfully end-to-end tested its dark fiber procedures,” Milner Aff. ¶ 34, it does not describe either those procedures or the testing.

36. Dark fiber is fiber that has been deployed but that has not yet been “lit” by electronic equipment at either end -- in effect, it is simply excess transmission capacity. It is important for developing CLECs to be able to access BellSouth’s dark fiber in order to most efficiently and flexibly expand their facilities-based competitive presence by installing their own electronics that comport with their network architectures. Because network construction for the initial placement of fiber facilities is timely and costly, involving permits, road work, conduit placement, and more, telecommunications carriers typically install large quantities of fiber cables. BellSouth has dark fiber available where it has upgraded its facilities from copper plant, and should be required to provide plant records to detail where excess capacity exists. Without this network element, CLECs’ only choices are to undertake the timely and expensive construction effort needed to place their own fiber in the ground or to purchase the use of lit fiber transport services from BellSouth. BellSouth’s failure to offer dark fiber on standard, reliable terms and conditions needlessly hinders CLECs’ competitive expansion.

#### **UNBUNDLED LOOPS (Checklist Item (iv))**

37. The checklist expressly requires that ILECs provide unbundled access to local loops. 47 U.S.C. § 271(c)(2)(B)(iv). In addition, loops are network elements, which ILECs are required to provide on a reasonable and nondiscriminatory basis. 47 U.S.C. § 251(c)(3), 271(c)(2)(B)(ii). BellSouth’s SGAT does not make unbundled loops available in accordance with these requirements. Aside from the serious OSS problems that are discussed in the declaration of

Samuel King, the SGAT is deficient in that it does not include standard intervals within which it will provide unbundled loops. This is a critical shortcoming given BellSouth's obligation to provide loops to CLECs as rapidly as it provides service to its own end users. The SGAT simply does not commit BellSouth to doing so, let alone include enforcement mechanisms needed to hold BellSouth to specified intervals.

38. For this reason, the unbundled loop offering contained in BellSouth's SGAT does not meet the Act's requirement of parity. The lack of a standard interval leaves CLECs, who must obtain unbundled loops from BellSouth in order to compete fully, at substantial risk of having to accept loops within intervals that are longer than those in which BellSouth provides loops to itself. That risk is not merely hypothetical: BellSouth has indicated elsewhere that its target installation interval for 2-wire analog voice grade loops is five days. See Attach. 5 (Direct Testimony of Jerry W. Moore Before the North Carolina Utilities Commission, at Exhibit JWM-D (August 5, 1997)). For BellSouth retail customers, by contrast, same day or next day service is generally available. The effect of the longer interval for CLECs is clear: customers -- particularly customers initiating new service -- are less likely to sign up with a CLEC if it will take at least five days to begin service with the CLEC but only a day or two to begin service with BellSouth. There is no reason that furnishing loops to CLECs should be technically more difficult for BellSouth than furnishing loops to itself. Indeed, the only technical problem is the lack of fully implemented ordering systems discussed in Samuel King's declaration, which, in combination with BellSouth's unreasonable and discriminatory business rules and processes, leaves CLECs unable to assure their customers of rapid initiation of service. As a practical

matter, BellSouth can use the disparity in loop provisioning intervals as a marketing tool to induce customers to remain with BellSouth.

**UNBUNDLED TRANSPORT  
(Checklist Item (v))**

39. The unbundled transport offering in BellSouth's SGAT is deficient because it does not make local transport available as an unbundled element. Although the SGAT purports to offer "local transport from the trunk side of its switches unbundled from switching," SGAT § V.A., the SGAT does not offer trunk ports as part of its tandem switching and local switching network elements. See SGAT §§ V.A.3., VI.A. BellSouth cannot provide an unbundled transport network element when it does not provide a trunk port option because, without the availability of trunk ports, there is nothing for an unbundled transport element to connect to. Thus, unbundled transport has not truly been offered in the SGAT.

40. BellSouth also has failed to make a clear showing that it can provide unbundled local transport to CLECs in a timely and nondiscriminatory fashion. BellSouth has provided only ten dedicated local transport trunks to CLECs in South Carolina. Milner Aff. ¶ 47. And BellSouth is unable to quantify the shared transport trunks being provided to CLECs. Id. ¶ 48. Yet BellSouth concluded that no end-to-end testing of its systems for providing unbundled local transport would not be necessary, citing the purported similarity of unbundled transport to the transport components of special access services. Id. ¶ 49. BellSouth has not shown that it has the capability to provide unbundled transport as an unbundled network element in a commercial setting on terms and conditions that comply with the Act.

**UNBUNDLED SWITCHING**  
**(Checklist Item (vi))**

41. BellSouth is not yet furnishing any CLEC with any unbundled switching functions or capabilities in South Carolina. Milner Aff. ¶ 50. BellSouth's SGAT describes in general terms the switching product that it plans to provide, but that alone gives no basis for concluding that it is capable today of providing that product. Mr. Milner points to no testing that BellSouth has done to demonstrate that its unbundled switching element is truly available, relying instead on the fact that BellSouth has provided twenty-one unbundled switch ports in other states in its region. See id. Again, however, the fact that BellSouth has provided unbundled switch ports, without more, does not answer the question of whether BellSouth can provide all features, functions, and capabilities of the switch on terms and conditions that comply with the Act.<sup>5</sup> Mr. Milner makes no mention of the specific terms under which BellSouth has provided switch ports, and no such terms are set forth in the SGAT. In this regard, MCI has requested unbundled local switching from BellSouth, and MCI and BellSouth are in discussions about an unbundled local switching trial. Details remain to be worked out. In Florida, MCI's request for unbundled local switching resulted in BellSouth's insistence that MCI submit a BFR. Although MCI objected to the requirement of a BFR in order to obtain a basic network element that BellSouth is clearly obligated to provide, MCI submitted a BFR under protest on September 15, 1997, and is awaiting BellSouth's response to that BFR. MCI's experience only emphasizes that BellSouth is not

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<sup>5</sup>For example, BellSouth has indicated in proceedings in Florida that it does not provide usage sensitive bill detail as part of its unbundled local switching element, including the detail needed for CLECs to bill access charges to IXCs, even though it acknowledges that information needed for billing is a feature, function, or capability of the switch. See Attach. 6 (Cross-Examination of Robert Scheye before the Florida Public Service Commission, Tr. at 566-67, 1717, 1720-23, 1744).

prepared to provide unbundled switching. BellSouth cannot be said to be offering unbundled switching until procedures have been documented, testing has been completed, and performance measures have been established, all showing that CLECs can rely on obtaining unbundled switching from BellSouth in a timely and effective manner.

**ACCESS TO 911/E911, DIRECTORY ASSISTANCE,  
AND OPERATOR SERVICES  
(Checklist Item (vii))**

42. As with most other checklist items, BellSouth does not adequately set forth in its SGAT the procedures that it will use to provide 911/E911, directory assistance services, and operator services as required by the Act. Relying on its assertions that unspecified “methods and procedures” for providing these services are already in place, BellSouth states repeatedly in the Milner affidavit that it was not necessary to perform end-to-end testing of the services required under this checklist item. See Milner Aff. ¶¶ 59, 61, 62, 63, 64, 65. Again, BellSouth points to a limited amount of actual experience, but does not show that the services it has provided were provided on terms and conditions that are both reasonable and nondiscriminatory. For example, BellSouth glosses over the fact that it has not provided CLECs with a complete copy of its directory assistance database that is at parity with the database available to BellSouth’s own directory assistance operators. This issue is discussed below in the section on dialing parity.

43. In addition, MCI has had difficulties with BellSouth dropping customers’ listings from the directory assistance database, white pages, and yellow pages following migration of the customer from BellSouth to MCI. BellSouth’s system calls for a migrated customer’s listings automatically to be deleted and to be restored only upon MCI’s specific request. The



presumption ought to be the opposite: that a migrated customer wishes to remain listed as is unless BellSouth receives notice to the contrary. When MCI assumed that customers' listings would remain unchanged after migration, BellSouth took advantage of the situation by not calling MCI's attention to the problem but instead notifying MCI's customers directly that their listings were about to be dropped. This is an example of how unreasonable requirements imposed by BellSouth can have a direct anticompetitive effect on CLECs' business. Because customer listings were dropped from white pages directories, this issue also implicates checklist item (viii).

#### **ACCESS TO NUMBERS (Checklist Item (ix))**

44. BellSouth, the NXX administrator in its region, claims that it provides nondiscriminatory access to NXX codes as required by the Act. See SGAT § IX. However, BellSouth has not identified any standards that are in place for its assignment of NXXs or performance measures by which its NXX administration may be assessed. In addition, BellSouth does not describe any steps it might have taken to ensure efficient management of NXX resources. To reduce the possibility of discrimination, BellSouth should take appropriate precautions against NXX exhaust. BellSouth has not shown that it complies with checklist item (ix) until it demonstrates that it has worked, in cooperation with the SCPSC, other ILECs, and new entrants, to eliminate the possibility of NXX exhaust.

45. Guaranteeing equal access to numbers is an explicit requirement of the competitive checklist because it is extremely important to new entrants in the local exchange market, especially when all the NXX codes within an area code become exhausted. In such situations, CLECs will be affected to a much greater extent than ILECs, because ILECs already

have NXX codes covering their entire territory, whereas CLECs can be completely blocked from extending service until a new area code is implemented, a process that typically takes more than a year to complete.

46. In addition to assigning NXX codes in an efficient and nondiscriminatory manner, BellSouth should also take appropriate steps to ensure that CLECs' codes are loaded into the switches of all third parties. Otherwise, voids will be created which prevent CLECs' customers from receiving calls from customers of third party carriers who do not have the CLECs' codes loaded. For this reason, BellSouth as NXX administrator should be notifying the industry about new NXXs that have been assigned to CLECs and are opening up. BellSouth does this today for its affiliates, such as BellSouth Mobility (BellSouth's cellular affiliate), so it becomes an issue of lack of parity when BellSouth refuses to notify third parties of NXXs assigned to unaffiliated CLECs. BellSouth also performs tests to ensure that its affiliates' codes have been loaded into its switches, but BellSouth does not perform similar tests for CLECs' codes. Again, this is a clear lack of parity.

#### **ACCESS TO CALL-RELATED DATABASES AND SIGNALING LINKS (Checklist Item (x))**

47. Access to BellSouth's call-related databases and associated signaling is required by the checklist. 47 U.S.C. § 271(c)(2)(B)(x). BellSouth will not have fully implemented the checklist until it is actually and verifiably providing such access on reasonable, nondiscriminatory terms. BellSouth is not doing so today. Again, BellSouth states on paper that it will provide all that is required by the Act, but does not set forth reliable procedures for doing so. For example, BellSouth claims that "[t]he SGAT provides the methods and procedures to

allow a CLEC to query the BellSouth LIDB database,” Milner Aff. ¶ 78, but the cited SGAT provision merely says that CLECs may query the database -- it does not say how. See SGAT § X.A.3.a. Likewise, BellSouth states that “[t]he SGAT provides the terms and conditions for nondiscriminatory access to BellSouth’s Toll Free Number Database,” Milner Aff. ¶ 85, but the cited section of the SGAT simply notes that “[t]he Toll Free Number Database is an SCP that provides functionality necessary for toll free number service.” SGAT § X.A.3.b. There is no mention of terms, conditions, or procedures. Moreover, BellSouth describes the testing of access to its AIN (Advanced Intelligent Network) only in the most general terms, and acknowledges that it has performed no end-to-end testing of its signaling service. See Milner Aff. ¶¶ 93, 94.

48. In addition, BellSouth’s SGAT states that it will provide Common Channel Signaling (“CCS”) where it is available for all CLASS features and functions except for call return. SGAT § XV.D. There is no reason why call return should not be made available to new entrants. Call return is a basic CLASS feature that is offered by nearly all ILECs to their end users. BellSouth’s refusal to provide CCS for this feature evidences a desire to restrict CLECs’ access to call-completing databases in violation of the Act.

49. Finally, the SGAT places a discriminatory limitation on CLECs in that it requires CLECs to use SS7 signaling for access to BellSouth’s 800 database, rather than using BellSouth’s Feature Group D service. See SGAT § I.B.7. (“The CLEC shall utilize SS7 signaling links, ports and usage as set forth in Section X below. The CLEC will not utilize switched access FGD service.”). The requirement that CLECs have SS7 capability is discriminatory because BellSouth allows independent telephone companies and its own cellular affiliate to use the Feature Group D protocol and obtain the signaling functionality from BellSouth. BellSouth has stated

that if a CLEC wishes to obtain access to its 800 database without using its own SS7 signaling, it will entertain that request through the BFR process. See Attach. 7 (Rebuttal Testimony of W. Keith Milner Before the North Carolina Utilities Commission (Sept. 15, 1997)). This is just one more unnecessary roadblock that BellSouth has laid down in front of its potential competitors.

**NUMBER PORTABILITY  
(Checklist Item (xi))**

50. BellSouth's SGAT offers interim local number portability ("ILNP") via remote call forwarding ("RCF") and direct inward dialing ("DID"). However, BellSouth has not made ILNP available in accordance with the checklist, 47 U.S.C. § 271(c)(2)(B)(xi), unless it can and will provide ILNP in a timely manner, in coordination with local loop cutovers. As with other checklist items, the SGAT sets no established interval within which it will provide interim number portability. And in other BellSouth states, BellSouth has not adequately coordinated ILNP with loop cutovers to MCI customers. For example, a Florida customer of MCI's suffered loss of service when, after cutover from BellSouth to MCI was rescheduled from August 21 to September 10, 1997, BellSouth disconnected the customer's circuits on August 21. Although MCI had confirmed the new date for the cutover with BellSouth, and although the RCF order had been corrected, the August 21 disconnect order had never been cancelled. The result was that the customer was out of service for five hours.

51. Likewise, on Friday, October 10, 1997, another Florida customer of MCI's was scheduled for loop cutover and ILNP at 6:00 p.m. MCI's representative had spoken with the BellSouth project manager that morning to ensure that the cutover did not occur before the scheduled time. But, at around 3:00 p.m., BellSouth proceeded to disconnect the customer's

lines, putting the customer out of service in the middle of its work day. Similar problems -- particularly premature disconnections by BellSouth resulting in loss of service -- have occurred repeatedly in BellSouth's territory.

52. To avoid these difficulties, the time window for ILNP conversions must be as narrow as possible and must be coordinated with cutover of the loop. These and related problems that MCI has experienced in other BellSouth states -- such as BellSouth's failure to honor MCI's requests for postponement of ILNP conversions and BellSouth's habit of taking the entirety of a two-hour window to complete a two-minute RCF -- must not recur in South Carolina. BellSouth's SGAT provides no performance measures or other standards that could serve as assurances that BellSouth will provide ILNP in a reasonable and nondiscriminatory manner. And BellSouth's affidavits ignore the implementation concerns associated with ILNP. See Varner Aff. ¶¶ 172-75; Milner Aff. ¶ 97.

53. Moreover, although BellSouth acknowledges that Route Indexing -- Portability Hub is a technically feasible method of providing ILNP, see Milner Aff. ¶ 96, BellSouth will only entertain requests for that method of ILNP via the BFR process. See Varner Aff. ¶ 172.

54. Finally, the SGAT makes only a vague promise to implement a permanent solution for number portability as it is developed by regulators and industry forums. SGAT § XI.F. That promise is insufficient to satisfy this Commission's expectation that a BOC will provide a detailed implementation plan for permanent number portability as part of its application for section 271 approval. See Michigan Order ¶ 342. In the affidavits supporting BellSouth's application, one affiant directs readers to another affiant, see Varner Aff. ¶ 178, and the second

affiant provides only a cursory discussion of BellSouth's plan. See Milner Aff. ¶ 102. BellSouth has made no serious effort to comply with the Commission's requirement to set forth a detailed plan for permanent number portability.

**DIALING PARITY**  
**(Checklist Item (xii))**

55. The Act requires ILECs to provide dialing parity, which Congress defined as including the duty to provide nondiscriminatory access to directory listings. 47 U.S.C. § 251(b)(3). This Commission has noted that any customer of a competing provider "should be able to access any listed number on a nondiscriminatory basis, notwithstanding . . . the identity of the telephone service provider for the customer whose directory listing is requested." Second Report and Order ¶ 135 (emphasis added). Furthermore, competing providers must have "the same quality of access to [directory assistance and directory listing] services that a LEC itself enjoys." Second Report and Order ¶ 142. Moreover, section 271(c)(2)(B)(vii)(II) makes nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" a stand-alone requirement of the competitive checklist. And section 251(c)(3) of the Act also requires ILECs to provide nondiscriminatory access to directory assistance databases as unbundled network elements. Thus, BellSouth cannot meet checklist items (xii), (vii), or (ii) unless it provides nondiscriminatory access to its database of directory listing information.

56. To satisfy these checklist items, BellSouth must offer CLECs the same DA database that is available to its own operators on a nondiscriminatory and equal-in-quality basis.

Although the SGAT does not reveal this limitation directly, see SGAT § VII.B.2.,<sup>6</sup> BellSouth has informed MCI that it will not provide the entire database, but only the listings for customers of BellSouth itself and of selected independent local telephone companies. BellSouth will not provide listings of those independent companies whose agreements with BellSouth include confidentiality provisions. As a result, CLECs' operators do not have access to the listings for customers of many of South Carolina's independent LECs -- even though BellSouth maintains a single, integrated database, through which BellSouth operators have access to all independent LEC listings. The availability of all independent companies' listings to BellSouth operators is clear from BellSouth's recent introduction of a national directory assistance service in Kentucky: test calls placed by MCI have confirmed that BellSouth is providing listings to users of that service that are not available to MCI's directory assistance operators. Thus, CLECs are not being provided with equal-in-quality access to unbundled DA databases. In practical terms, in order to access directory service listings for customers of independent telephone companies an MCI customer will have to be transferred by MCI to BellSouth's directory assistance or dial a special code to by-pass MCI and reach BellSouth. This is hardly dialing parity, and it damages competition by making MCI's local service less attractive than BellSouth's.

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<sup>6</sup>The only hint of BellSouth's policy of shielding certain carriers' directory listings from disclosure to CLECs is in SGAT § VIII.F., which states that BellSouth will treat CLECs' directory listing information with the same confidentiality that it accords its own listing information. I understand that BellSouth's rationale for not providing all directory listings is that it is contractually committed to keeping certain carriers' listings confidential. However, the Act requires all LECs -- both BellSouth and any ILEC or CLEC whose listings it refuses to provide -- to make their directory listings available in a nondiscriminatory manner. See 47 U.S.C. § 251(b)(3). A private contract cannot abrogate this duty.

**RECIPROCAL COMPENSATION**  
**(Checklist Item (xiii))**

57. The reciprocal compensation process proposed by BellSouth in the SGAT is not equitable, because it does not provide for truly reciprocal compensation with respect to the tandem interconnection rate for terminating local traffic. BellSouth intends to bill CLECs for tandem switching used to terminate calls from CLECs' customers. However, BellSouth apparently will not permit CLECs to bill BellSouth equally for the use of CLEC switches having the same functionality and geographic scope as BellSouth's tandems. Instead, according to the SGAT, BellSouth will pay only the end office termination rate when a CLEC has a single switch, regardless of the switch's functionality and geographic scope. See SGAT § XIII. & Attach. A.; Varner Aff. ¶ 184.

58. MCI's and other CLECs' local switches perform the same functions and provide the same services -- transport and termination -- as do BellSouth's tandem switches. When MCI interconnects with an ILEC's tandem and an ILEC interconnects with MCI's switch, the function performed by each switch is to allow customers of each carrier to call one another. That function is unaffected by the fact that the ILEC accomplishes it by using a tandem switch, while MCI uses a different network architecture. Accordingly, the reciprocal compensation arrangements contemplated by BellSouth are not in fact reciprocal.

**RESALE**  
**(Checklist Item (xiv))**

59. BellSouth has not complied with the statutory checklist with respect to the resale of telecommunications services provided to retail customers, because BellSouth is evading



its duty "not to prohibit, and not to impose unreasonable or discriminatory conditions on, the resale of such telecommunications services." 47 U.S.C. § 251(c)(4)(B). The serious deficiencies in BellSouth's OSS for resale, which render commercial entry via resale unworkable at this time, are discussed in the declaration of Samuel King. The SGAT's provisions with respect to resale are also deficient on their face.

60. Although the Act requires ILECs to make all telecommunications services available at a wholesale discount for resale to end users, 47 U.S.C. § 251(c)(4) (discussing ILECs' duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail"), BellSouth's SGAT states that contract service arrangements are not available to CLECs at the wholesale discount, but only at the same rates offered to BellSouth end users. SGAT § XIV.B.1.; see Varner Aff. ¶¶ 191, 192. This policy constitutes a wholly unwarranted limitation on CLECs' ability to resell certain BellSouth telecommunications services. BellSouth has pointed to no justification in the Act for this policy.

61. In addition, BellSouth has been using information gained from CLECs resale activity in an improper effort to retain customers. This is a misuse of CLECs' and their customers' data. Specifically, during a resale trial in Georgia, MCI discovered that BellSouth was sending retention letters to customers before their service had migrated to MCI. BellSouth could only have obtained the information that these customers were switching service to MCI through access to MCI's resale orders. BellSouth argued to the Georgia Public Service Commission that these retention letters were triggered by disconnect orders to BellSouth, not by MCI's order submissions. See Attach. 8 (Letter from Fred McCallum, Jr., BellSouth, to Chairman Stan Wise, Georgia Public Service Commission (Aug. 14, 1997)). However, I myself received one of

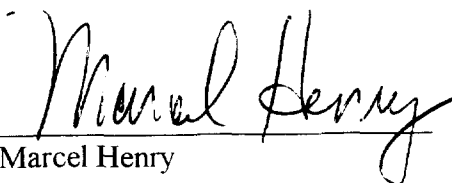
BellSouth's retention letters, even though I was initiating new service, not converting a line that had been BellSouth's. See Attach. 8A (BellSouth retention letter to Marcel Henry). The letter I received could not have been triggered by a disconnect order, as there was no disconnect order in that case. Use of MCI's ordering information to retain customers before they can even be migrated is anticompetitive, discriminatory, and contrary to the Act.

62. On a similar note, another MCI employee, Butch Aggen, received a BellSouth-branded leave-behind doorhanger when he had a second line, resold by MCI, installed at his home. See Attach. 9 (BellSouth doorhanger). This is directly contrary to SGAT § XIV.F. and is anticompetitive, particularly because the doorhanger promoted BellSouth's service with slogans such as "At BellSouth, we care about the quality of your service." Id.

### **CONCLUSION**

63. For all of the reasons discussed above, BellSouth's SGAT does not truly offer each of the fourteen items required under the Act's competitive checklist. BellSouth's offerings of some items are deficient on their face. Others are deficient because BellSouth has not shown that there are established and reliable procedures in place through which it can provide checklist items in commercial quantities on terms and conditions that comply with the Act. The SGAT, after all, is just paper, and it is easy to put in writing an intention to do what the Act requires. What takes effort, and what is essential to permit local competition to develop, is to make items truly available by setting up standardized procedures that allow CLECs to obtain any item as a matter of course. BellSouth has not yet done that.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
October 20, 1997.

  
Marcel Henry

# **ATTACHMENT 1**

## MCI Telecommunications Corporation

MCI Center  
Three Ravinia Drive, Fourth Floor  
Atlanta, GA 30346  
770 280 7840  
Fax 770 280 7849  
Marcel Henry  
General Manager  
Southern Financial Operations

January 27, 1997

Mr. Mark L. Feidler  
President, InterConnection Services  
BellSouth Telecommunications, Inc.  
Suite 4511  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Dear Mark,

In anticipation of our approved interconnection agreements and as follow up to Michael Beach's letter to you dated January 3, 1997, I am writing to formally notify BellSouth of MCI's intent to order unbundled loops, all unbundled network elements, and resale service. In order for MCI to move forward with commercial service plans, MCI requests that BellSouth provide information, outlined below, for each one of these delivery methods by February 5, 1997. MCI would like to meet with BellSouth during the week of February 10, 1997 to discuss our plans to utilize all of these services.

MCI asks that you provide all updated documentation and information which will enable MCI to order and support commercial service via unbundled loops, resale service, and any combination of unbundled network elements. These elements include, but are not limited to, Local Loop, Network Interface Device, Switching Capability, Interoffice Transmission Facilities, Signaling Networks and Call-Related Databases, Operations Support Systems Functions and Operator Services and Directory Assistance.

The documentation and information MCI requires includes, but is not limited to the following:

- Preordering information
- Ordering, installation, maintenance, billing, and pricing information
- Order processing, installation, maintenance and billing policies, procedures, forms and contacts
- Order intervals
- Cutover procedures
- Escalation procedures and contacts
- Products/services supported via unbundled loops, unbundled network elements, and resale

I am asking for cooperation from BellSouth so MCI may take the first step toward commercial service with unbundled loops. MCI would like to place test orders for unbundled loops at the serving wire center

locations identified on the next page, starting February 19, 1997. These loops will be used in a trial MCI will conduct to test processes and procedures prior to offering service to customers. MCI expects BellSouth to treat these orders as you would treat any other customer.

After receipt of the unbundled elements documentation, MCI will schedule an alpha test of unbundled local switching, combined with unbundled loops, at one or more of the serving wire center addresses listed on the next page. We would like to start this alpha no later than February 21, 1997.

Additionally, MCI would like to order, test, and offer commercial local service by purchasing the combination of dedicated interoffice transport, TR 303 digital loop concentration service, and unbundled loops. Testing locations to be specified at the time of our meeting. MCI also would like to commence this testing no later than February 28, 1997.

Serving Wire Centers:

CLLI Address

ATLNGASS Atlanta, GA

SMYRGAMA Smyrna, GA

MIAMFLWM Miami, FL

HLWDFLWH 250 S.W. 62nd Street (Miami)

MIAMFLGR 45 N.W. Fifth Street (Miami)

ORLDFLMA 45 N. Magnolia Avenue (Orlando)

ORLDFLPH 5120 Silver Star Road (Orlando)

ATLNGACS 70 Courtland Street (Atlanta)

ATLNGAPP 65 10th Street (Atlanta)

DNWDGAMA 5375 Chmb-Dnwd (Dunwoody)

SMYRGAPP 1732 Powers Ferry Road (Smyrna)

MCI is requesting a meeting with BellSouth senior management during the week of February 10, 1997 to discuss our plans for utilizing all the services specified in this letter and ensure that BellSouth is prepared to offer services and treat MCI orders at a level compliant with the provisions of the Telecom Act. We can arrange a meeting to accommodate all required participants by hosting it in person or via a conference bridge. We would appreciate a contact name with whom MCI can work to set up the meeting.

Sincerely,

/S/  
Marcel Henry

# **ATTACHMENT 1A**

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 97-115-C**

In the matter of:

Application of MCImetro Access )  
Transmission Services, Inc. for a )  
Certificate of Public Convenience and )  
Necessity to Provide )  
Telecommunications Services. )

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**TESTIMONY OF  
GREG DARNELL**

1     **Q:   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2     A:   My name is Greg Darnell. My business address is 780 Johnson  
3         Ferry Road, Atlanta, Georgia, 30342.

4  
5     **Q:   BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6     A:   I am the Regional Manager of Competition Policy for MCI  
7         Telecommunications Corporation. My responsibilities include  
8         defining what MCI's external policies should be and advocating  
9         those policies throughout the nine BellSouth states.

10  
11    **Q:   PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND**  
12         **EXPERIENCE.**

13    A:   I have a Bachelors degree in Economics from the University of  
14         Maryland and have completed Graduate courses in Electrical  
15         Engineering, Economics and Public Policy at George Washington  
16         University. I have 15 years experience in the  
17         telecommunications industry. My work experience includes



1 obtaining licenses and construction permits for Radio  
2 Stations, anti-trust litigation in MCI vs. AT&T, Corporate  
3 Finance, Business & Economic Analysis, Federal Regulatory,  
4 ILEC Relations and State Regulatory. I have testified on  
5 behalf of MCI in numerous local competition arbitration cases  
6 on resale and ancillary services matters and have written and  
7 filed comments on behalf of MCI in a broad range of tariff and  
8 rulemaking dockets at the Federal Communications Commission.

9  
10 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 **A:** The purpose of my testimony is to present evidence describing  
12 the technical, managerial and financial fitness of MCImetro  
13 Access Transmission Services, Inc. (MCImetro) to provide the  
14 proposed telecommunications services in South Carolina. This  
15 testimony will also describe the services proposed by  
16 MCImetro. Finally, the purpose of my testimony is to show  
17 that the public interest will be served by approval of the  
18 application of MCImetro for a certificate of public  
19 convenience and necessity.

20  
21 **Q: PLEASE DESCRIBE MCIMETRO'S CORPORATE STRUCTURE.**

22 **A:** MCImetro is a corporation under the laws of the State of  
23 Delaware. MCImetro is a wholly-owned subsidiary of MCImetro,  
24 Inc. which is a wholly-owned subsidiary of MCI  
25 Telecommunications Corporation, or MCIT, which, in turn, is a